

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)	
)	
Amendment of Section 73.202(b),)	
FM Table of Allotments,)	MB Docket No. 06-43
FM Broadcast Stations.)	RM-11313
(Oakwood, Texas))	
)	
(Normangee, Texas))	MB Docket No. 06-66
)	RM-11321

REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 3, 2007

Released: October 5, 2007

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it two *Notices of Proposed Rule Making*.¹ We are consolidating these two proceedings because the counterproposals filed in each proceeding are mutually exclusive.² Charles Crawford filed comments and a 'Request for Approval of Withdrawal' ("Withdrawal Request") in both MB Docket No. 06-43 and MB Docket No. 06-66. Linda Crawford filed a counterproposal in MB Docket No. 06-43 and 'Request for Approval of Withdrawal.' In MB Docket No. 06-66, Roy Henderson, ("Henderson"), licensee of Station KHTZ, (*formerly* KLTR), Channel 297A, Caldwell, Texas, filed a counterproposal, 'Motion for Leave to Supplement Comments and Counterproposal,' and 'Memorandum of Law.' No other comments or counterproposals were received in response to this proceeding.

2. **Background.** The *Notice* in MB Docket No. 06-43, proposed the allotment of Channel 300A at Oakwood, Texas, as its first local service. Charles Crawford filed timely comments, reiterating its expression of interest in the proposed Oakwood allotment but later filed a Withdrawal Request in compliance with Section 1.420(j) of the Rules, stating that he desires to withdraw his petition and expression of interest.

3. In response to this *Notice*, Linda Crawford filed a timely counterproposal, requesting the allotment of Channel 299C3 at Bédias, Texas, as its first local service and Channel 300A at Oakwood, Texas at new reference coordinates to resolve the conflict with the *Notice's* proposal. Linda Crawford requested to withdraw her counterproposal after the proceeding closed. This request complied with Section 1.420(j) requirements.

4. The *Notice* in MB Docket No. 06-66, proposed the allotment of Channel 299A at Normangee,

¹ See *Oakwood, Texas*, Notice of Proposed Rule Making, 21 FCC Rcd 1643 (MB 2006) ("*Notice*") and *Normangee, Texas*, Notice of Proposed Rule Making, 21 FCC Rcd 3315 (MB 2006) ("*Notice II*").

² These two proceedings are being consolidated because the counterproposal, requesting the allotment of Channel 299C3 at Bédias, Texas filed by Linda Crawford in connection with MB Docket No. 06-43 conflicts with the counterproposal, proposing the reallocation of FM Station KHTZ from Channel 297A at Caldwell, Texas to Channel 297C3 at Bédias, Texas filed by Roy Henderson in MB Docket No. 06-66.

Texas, as its first local service. In compliance with Section 1.420(j) of the Rules, Charles Crawford later filed a Withdrawal Request, stating that he desires to withdraw his petition and expression of interest for Channel 299A at Normangee.

5. In response to this *Notice*, Henderson filed a timely counterproposal, requesting the reallocation of FM Station KHTZ, Channel 297A at Caldwell to Channel 297C3 at Bédias, Texas, as its first local service and modification of the FM Station KHTZ license; and the reallocation of FM Station KKL B, Channel 267A from Madisonville to Caldwell, Texas, to prevent removal of Caldwell's sole local service and modification of the FM Station KKL B authorization. Henderson filed a Memorandum of Law, stating that this proceeding is no longer contested and its proposal results in a preferential arrangement of allotments, under the Commission's FM allotment priorities.³ Moreover, Henderson states that its proposal does not violate the Commission's backfill policy.⁴

6. **Discussion.** In compliance with Section 1.420(j) of the Rules, we will grant both requests of Charles Crawford to withdraw its petitions for Channel 300A at Oakwood, Texas, and Channel 299A at Normangee, Texas; and the request of Linda Crawford to withdraw her counterproposal filed in connection with MB Docket No. 06-43. Each party has filed an affidavit pursuant to Section 1.420(j) of the Rules, certifying that it has not nor will not receive, either directly or indirectly, any money or other consideration in connection with its respective withdrawal request. A showing of continuing interest is required before a channel is allotted to a community in compliance with the *Appendix* to the *Notice*. It is the Commission's policy to refrain from making a new allotment to a community absent an expression of interest. As such, we are dismissing the petitions, requesting the allotment of Channel 300A at Oakwood, Texas, and Channel 299A at Normangee, Texas, along with the counterproposal filed by Linda Crawford in accordance with Section 1.420(j) of the Rules.

7. We are also dismissing Henderson's counterproposal. Specifically, the proposed reallocation of FM Station KKL B, Channel 267A from Madisonville to Caldwell, Texas conflicted with the proposed allotment of Channel 267A at Rosebud, Texas, requested in MB Docket No. 05-229.⁵ The proposed Rosebud allotment was still under consideration when Henderson filed its counterproposal. Counterproposals are required to be "technically correct and substantially complete" when filed and non-dependent on final actions in another proceeding.⁶ In allocation proceedings, a counterproposal is deemed defective if it conflicts with, or contingent upon, a cut-off proposal or a non-final decision in another proceeding.⁷ This policy not only affords protection to parties entitled to cut-off protection, it

³ See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1988).

⁴ See *Pacific Broadcasting of Missouri, LLC*, Memorandum Opinion and Order, 18 FCC Rcd 2291 (MB 2003); *recon denied*, Memorandum Opinion and Order, 19 FCC Rcd 10950 (2004) (stating that vacant allotments can no longer be used as a backfill for the purposes of replacing the community's sole local service).

⁵ See *Rosebud and Madisonville, Texas*, Report and Order, 21 FCC Rcd 7898 (MB 2006); *recon denied*, Memorandum Opinion and Order, 22 FCC Rcd 3795 (MB 2007).

⁶ See *Saint Joseph, Louisiana et al*, Memorandum Opinion and Order, 21 FCC Rcd 2254 (MB 2006) (stating that the counterproposal was properly dismissed as an impermissibly contingent proposal; and that counterproposals are required to be technically correct and substantially complete when filed).

⁷ See *Amboy, California, et al.*, Report and Order, 19 FCC Rcd 12405 (MB 2004), *citing Pinewood, South Carolina*, Memorandum Opinion and Order, 5 FCC Rcd 7609 (1990) (stating that it was proper to dismiss a petition conflicting with a cut-off counterproposal in another proceeding); *Auburn, Alabama, et al.*, Memorandum Opinion and Order, 18 FCC Rcd 10333 (MB 2003) (accepting only rulemaking proposals that rely upon actions in earlier rulemaking proceedings that are effective but not final); *Kaukauna and Cleveland, Wisconsin*, 6 FCC Rcd 7142 (MMB 1991) (continued....)

also is essential to the efficient processing of proposed changes to the FM Table of Allotments. Processing proposals that are not capable of being effectuated on the date of filing would cause an unnecessary expenditure of Commission resources and would impose an unfair burden on other parties.⁸

8. This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the proposed rule was dismissed.

9. Accordingly, IT IS ORDERED, That the Petitions for Rule Making filed by Charles Crawford for Channel 300A at Oakwood, Texas and Channel 299A at Normangee, Texas, ARE DISMISSED.

10. IT IS FURTHER ORDERED, That the counterproposal filed by Linda Crawford, IS DISMISSED.

11. IT IS FURTHER ORDERED, That the counterproposal filed by Henderson, IS DISMISSED.

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

13. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

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(stating that the counterproposal was not acceptable for rule making because it was short-spaced to cut-off proposal in another proceeding).

⁸ *See Cut and Shoot, Texas* 11 FCC Rcd 16383, 16384 (MMB 1996). (processing petitions for rule making which are contingent upon action by third parties "is not conducive to the efficient transaction of Commission business and imposes unnecessary burdens") *See also Auburn, supra* (processing contingent proposals is inefficient because "[t]he staff would either have to wait until the contingency is met, thereby further delaying action in a case, or would have to revisit a decision if a proposal was granted contingent on the outcome of an action that never occurred").